

Commission's access procedures. Finally, in response to the joint motion for hearing submitted by MetroComm, FiberNet and Ohio Linx, Ohio Bell submits that, in light of the detailed comments submitted by the Coalition, of which these three entities are a part, it is inconceivable how an evidentiary hearing will more fully develop the issues surrounding collocation. Therefore, for all of the foregoing reasons, Ohio Bell urges this Commission to deny the requests for hearing.

OCC, in its initial comments submitted on December 16, 1992, and in a January 4, 1993 pleading, discusses its position on the merits of a public hearing on collocation. OCC avers that, while not backing away from its position that public hearings are necessary and appropriate for the proper determination of policy, in the face of federal preemption if a decision is not made by February 16, 1993, and because the position advocated by staff is more flexible than the FCC's collocation position, that, under the narrow issue of collocation presented here, OCC is satisfied that notice and comment provides an adequate opportunity to be heard under the circumstances.

#### Conclusion on Public Hearings

Initially, the Commission would point out that this is not a proceeding being conducted under Section 4905.26, Revised Code. Rather, this proceeding, like most generic investigations, is being conducted pursuant to the Commission's supervisory powers as stated in Sections 4905.05 and 4905.06, Revised Code. Therefore, public hearings are not mandated. Further, we agree with Ohio Bell that reliance on Ohio Bell and MCI is misplaced. As correctly noted by Ohio Bell, the aforementioned cases dealt with rate-making issues whereas this Commission's policy on the appropriate method of collocation for intrastate purposes is clearly not setting or changing a rate. As previously noted, the FCC and this Commission is, for the first time, developing the regulations which will allow entities to interconnect with LEC facilities. We also note that MetroComm, FiberNet and Ohio Linx acknowledge that "(G)eneralities of these issues (collocation positions) could be provided in pleading's and affidavits." (original emphasis).

Based upon the foregoing, we are convinced that the notice and comment procedure employed by the Commission is wholly adequate and appropriate in order to adopt a statewide position on collocation. Therefore, we deny the motions for hearing on the issue of collocation. This does not, however, foreclose us from conducting a hearing on the entire interconnection proposal if we deem one appropriate.

#### b) Intervention

MetroComm, FiberNet and Ohio Linx also filed, on December 15, 1992, motions to intervene. In support of their motions, the movants acknowledge that, while the Commission does not require motions to intervene in generic proceedings, this action was being taken in an abundance of caution and in order to identify their considerable interest on this issue. Ohio Bell, while not opposing the motions, pointed out that, as recognized by these movants, generic rule-making proceedings do not necessarily require formal intervention.

#### Conclusion on Intervention

As acknowledged by the movants and by Ohio Bell, this Commission does not require formal motions to intervene in order to participate in generic Commission ordered investigations. Accordingly, it is unnecessary to rule on these motions at this time.

#### c) Notice to Affected Parties

MFS, in its December 6, 1992 memorandum in support of a formal evidentiary hearing, also alleges that the notice provided by the November 12, 1992 Entry may be insufficient to notify all interested entities. In fact, MFS claims that, as a certified interexchange carrier, it was not served notice of the November 12, 1992 Entry and that other carriers may have been similarly missed. Moreover, according to MFS, interconnection is of importance to a wide range of telecommunication providers, large and small business users and consumer groups. Thus, it is imperative that the Commission publish notice and conduct a public hearing as required by Section 4905.26, Revised Code.

#### Conclusion on Notice to Affected Parties

A thorough check of the docket in this proceeding reveals that a copy of the Commission's November 12, 1992 Entry was served upon all LECs, all interexchange carriers, all cellular companies, all paging companies, OTA, OCC, the cities of Cleveland, Columbus and Cincinnati, OPCA, OCTVA, all pending competitive access provider applicants, all parties that the staff heretofore met with informally and all other interested persons of record. Included in the list of interexchange carriers are all certified competitive access providers. MFS, as a certified interexchange carrier, was properly served, at the office of its president in Oakbrook Terrace, Illinois,<sup>13</sup> a copy of the Commission's November 12, 1992 Entry. Because the Entry was not returned to the Commission, we

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13. Upon further investigation, the Commission has determined that MFS' regulatory affairs staff and attorneys are located in Washington, D.C.

must presume that notice was received by the addressee and indeed that is the case in this proceeding. Further, a thorough review of the comments fails to reveal any other entity which did not receive a copy of the November 12, 1992 Entry. Finally, MFS does not allege, nor could it allege,<sup>14</sup> that this incident impaired its opportunity to respond to the staff's proposed collocation position. Therefore, this averment is without merit.

In addition, although we make every effort to serve actual notice on all interested entities including regulated telecommunication providers, in this case the Commission also issued a press release generally explaining the purpose of the November 12, 1992 Entry and encouraging interested entities to contact the Commission for additional information. The Commission believes that this process adequately informed all entities of this pending proceeding. In fact, in this case 18 sets of comments were submitted on behalf of 27 interested entities. Therefore, as evidenced by these numbers, we believe the use of a notice and comment procedure on the issue of collocation is appropriate.

### III. Discussion of Comments on Staff's Virtual Collocation Position

Staff's collocation recommendation, as embodied in Appendix A to the November 12, 1992 Entry, mandated virtual collocation as the minimum allowable form of interconnection for intrastate purposes. However, LECs were given the option of providing physical collocation at particular COs if they so desired. Once a LEC chose the latter option, it would be obligated, until floor space ran out, to offer physical collocation at that particular CO to all interconnectors requesting it. Thereafter, the LEC would be responsible for providing virtual collocation to parties seeking to interconnect with that LEC's switch. Staff's recommendation permitted interconnectors using virtual collocation arrangements to designate the CO transmission equipment dedicated to their use, as well as the right to monitor and control their circuits. This did not, however, prohibit interested interconnectors from arranging for the LECs to provide monitoring and control functions if agreeable to both parties. Additionally, interconnectors were not limited to a particular list of equipment developed by the LECs, but all interconnector equipment had to meet network integrity and all applicable fire and safety standards. LECs were permitted to require interconnectors to bear any additional costs reasonably incurred as a result of the interconnector's choice of equipment. Further, LECs were required to, at a minimum, install, maintain and repair interconnector equipment under the same time intervals

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14. As discussed in more detail below, MFS participated in the detailed initial and reply comments submitted by the Coalition.

and with the same failure rates that applied to similar LEC equipment. Staff recommended that the parties be permitted to negotiate financial arrangements governing the lease or ownership of interconnector CO electronics and interconnecting fiber; however, such negotiated terms were to be submitted and reviewed through the tariff review process.

Those parties generally arguing in opposition to the staff's virtual collocation position, and urging the Commission to mirror or adopt the FCC's physical collocation position, were AT&T, Cablevision, Coalition, ICN, New Par, OCTVA, OPCA and Cellnet. By way of background, the Coalition explained that the competitive access industry, while operating in over 60 metropolitan areas around the country, represents less than one percent of the access market dominated by the LECs. According to the Coalition, the benefits of competition, as found by the FCC, are more rapid deployment of new technology, system redundancy and diversity, increased service innovation, customer choice and price competition.

The Coalition next explains that four<sup>15</sup> states, New York, Massachusetts, Illinois and Pennsylvania, have experimented with interconnection/collocation policies to date. Thereafter, before

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15. The New York Telephone Company (NYT), after the convening of a public service commission-ordered industry task force and negotiations among the parties, has filed a tariff which permits physical collocation. The Coalition claims that two competitive access providers (CAPs) have obtained collocation under this tariff in 14 COs.

New England Telephone (NET) adopted a tariff similar to NYT's with two CAPs obtaining physical collocation in eight NET COs in Boston.

In Illinois, Centel has filed a tariff providing physical collocation and three CAPs have obtained service under this tariff. In contrast, Illinois Bell Telephone Company (IBT) has negotiated a virtual collocation tariff with one CAP out of three COs.

Bell of Pennsylvania (Pa. Bell), on the other hand, recently filed a trial collocation tariff with a limited duration of one year. The tariff provides for both virtual and physical collocation in different COs.

Finally, the Coalition avers that New Jersey Bell and Pacific Bell have established single virtual collocation arrangements as customer-specific contracts.

explicitly raising the arguments in support of physical collocation, the Coalition posits its concerns with what it perceives to be significant procedural flaws in this proceeding. Specifically, the Coalition cites the highly expedited nature of this proceeding, the lack of notice to all affected entities and the absence of staff's stated rationale in support of virtual collocation over physical collocation.

The Coalition further maintains that adoption of staff's collocation position would, in contradiction of the statutory policy goals found in Section 4927.02, Revised Code, establish a restrictive policy that will inhibit competition and innovative investment in telecommunications and would reduce Ohio's ability to attract and retain communications-intensive industries. Further, virtual collocation, according to the Coalition, Cablevision and OCTVA, does not provide the operational, economic and technical equivalent of physical collocation because, under virtual collocation, the LEC will insinuate its lower service standards between the interconnector and its potential customer, thereby negating many of the benefits upon which CAPs have developed a customer base. Moreover, the Coalition asserts that virtual collocation will lead to protracted litigation as LECs will be motivated to ensure that CAP service standards do not exceed their own.

The Coalition and OCTVA explain that, under physical collocation, a portion of unused CO space is typically set aside for each interconnector's equipment (usually in 100 square foot increments) and the interconnector's personnel is permitted access to this area in order to install and maintain the collocated equipment. Whereas, under virtual collocation, an interconnector's equipment is likely installed in dedicated equipment bays or racks. Under this arrangement, installation, repair and maintenance is generally performed by LEC personnel. Thus, it is the ability to have direct access to LEC central offices that is at the heart of this controversy.

In arguing that virtual collocation is not the operational equivalent of physical, the Coalition asserts that CAPs will be denied their advantage of higher service standards over the LEC, will be constrained in their flexibility to modify and upgrade their network and will be forced to pay significant costs for training LEC personnel to maintain their equipment. Virtual collocation, according to the Coalition, invariably imposes the LECs' inefficiencies on the collocated CAPs. Only when the CAP has the ability to utilize physical collocation does the LEC have the necessary incentive to negotiate a virtual collocation agreement which may be operationally and economically equivalent to physical collocation and will not present the need for extensive regulatory involvement.

OCTVA avers that LEC concerns regarding CO security, network reliability and availability of CO floor space can and should be addressed without sacrificing the goal of advancing true competition. Regarding security, OCTVA claims that LECs today routinely allow independent contractors and interexchange carrier personnel into their COs. In order to ensure security, OCTVA avers that interconnector personnel could be limited to certain floors, be required to obtain and wear, at all times, non-LEC employee photo identifications and be escorted by LEC personnel during the visit to the CO. In addition, interconnectors could submit to the LEC a list of all approved vendors and personnel entitled to maintain and repair interconnector equipment.

Regarding network reliability, OCTVA states that interconnectors have an incentive to operate in compliance with all equipment standards and operation and maintenance procedures because it would not behoove interconnectors for the LEC network to fail. Additionally, OCTVA is concerned that staff's position will open up interconnectors to increased maintenance costs due to paying LEC labor rates and maintenance training for LEC employees. Finally, regarding floor space, the Coalition and OCTVA recognize that physical collocation may not be possible in every CO. However, the FCC has acknowledged this fact and has permitted LECs to file for an exemption in individual COs if this is the case. In such an event, virtual collocation is the alternative.

The Coalition also takes exception to the argument that physical collocation leads to increased expense due to CO surveying and site preparation. In support of its position, the Coalition points out that the FCC, on December 18, 1992, decreased the number of COs, by as much as 90 percent, for which LECs had to prepare for physical collocation and that, regardless, the FCC has ensured that LECs will be fully compensated for any reasonable expense incurred.

The OPCA and Cellnet express several concerns regarding virtual collocation including determination of the interconnection point, installation and maintenance of unfamiliar interconnector equipment by LEC personnel, determining ownership of equipment used by the interconnector and adoption of a uniform pricing methodology for the termination charges imposed by LECs for all types of traffic. These two entities encourage the Commission to broaden the scope of this proceeding and to hold an evidentiary hearing to consider these issues.

Finally, the Coalition and OCTVA deny that mandatory physical collocation involves a "taking" under the Fifth Amendment to the Federal Constitution and Article I, Section 19 of the Ohio Constitution because both the FCC and this Commission have sufficient implied authority under the respective enabling legislation to

regulate the operation and connection of LEC networks with other entities. Moreover, according to these entities, this LEC argument is specious because virtual collocation is identical to physical collocation in that a portion of the CO is dedicated to the exclusive use of the interconnector. However, even assuming arguendo that mandatory physical collocation amounts to a taking, the Coalition and OCTVA argue that LECs will be reasonably compensated for this appropriation through the tariffs on file at the FCC and mirrored here at the Ohio Commission.

Those entities generally supporting staff's virtual collocation recommendation and against mandating any form of collocation include: OCC, CBT<sup>16</sup>, GTE, Ohio Bell and United. In fact, CBT and OCC state that each LEC must consider different factors including, but not limited to, space availability, equipment type and its predisposition to permitting entities access to its COs in deciding whether to offer physical or virtual collocation. OCC further avers that staff's collocation position is much more flexible than the FCC's and that adopting the FCC's standard amounts to condoning state preemption. Raising similar concerns, GTE points out that adopting staff's proposal preserves some measure of control by this Commission over expanded interconnection, while adopting the FCC's position, as some commenters have proposed, essentially amounts to an abdication of Ohio's rights to federal authority for the indefinite future. Further, by adopting staff's position, the Commission would not be preempting federal authority but merely exercising the option given to the states in the FCC's 91-141 Order.

CBT did ask for clarification of the staff's position, however. According to CBT, although staff's position appeared to allow a LEC to choose the form of interconnection, it could also be construed that a LEC would be required to adopt a general policy in favor of virtual collocation and then seek, on an as needed basis, an exemption to offer physical collocation. If the latter option was meant, CBT encouraged the Commission to reconsider this position.

GTE and CBT disagree with the Coalition's characterization that the FCC's mandatory physical collocation position was unanimously approved after long and careful consideration. According to these entities, the FCC's Notice of Proposed Rulemaking left it up to the individual LEC to determine if it wanted to offer physical or virtual collocation at a given CO. Because the

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16. While favoring LEC choice regarding the appropriate method of collocation to adopt, CBT acknowledges that it would likely negotiate physical collocation arrangements at most of its COs.

LECs favored such a policy, there was little need for them to comment further on this aspect of the FCC's Order. GTE and CBT further posit that mandatory physical collocation was only supported by three of the five FCC commissioners with both Chairman Sikes<sup>17</sup> and Commissioner Quello strongly questioning this policy. However, according to CBT, once the FCC adopted mandatory physical collocation, CBT and other Tier 1 LECs, including GTE, United and Ohio Bell, immediately challenged that decision. CBT also expresses its view that several aspects of the FCC's Order, including mandatory physical collocation, are likely to be overturned on appeal.

GTE raises a number of issues upon which the Commission should act. According to GTE, the Commission should specify meet point interfaces at optical transmission speeds in a specific number of locations (preferably manholes); all collocation should be optical not electrical due to the technical limitations of electrical signals; space allocation standards should not be established as space constraints are inevitable, thus, leading to discrimination; and standard lists of interconnection equipment should be tariffed and allow private contracts for non-standard equipment. GTE also states that the alleged disasters that will follow the adoption of virtual collocation are mere speculation and run counter to the most analogous real world experience regarding access services between the LECs and the IXC's. As GTE points out, there has been little litigation involving access between the LECs and IXC's to date.

Ohio Bell and United agree that mandatory physical collocation raises concerns over central office security, future space allocations, implementation costs and network reliability. United further argues that the incremental costs of mandatory physical collocation are substantial and must be undertaken with the probability of eventual demand for collocation in only a small number of LEC COs. Under such a requirement, LECs are required to analyze each CO to determine space availability under current and future conditions, as well as the technical feasibility of collocation. Moreover, LECs must conduct site-specific security assessments and develop plans for the collocation area, associated architecture and such other requirements as lighting, power, electrical grounding, air conditioning and environmental protection.

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17. According to GTE and CBT, Chairman Sikes expressed both legal and policy objections to mandatory physical collocation and argued that the adopted method of collocation raises serious questions about the "taking" or confiscation of LEC property in violation of the Fifth Amendment to the United States Constitution.



In its reply comments, Ohio Bell takes issue with the suggestion that, under virtual collocation, interconnectors will be forced to accept inferior service quality. Ohio Bell and United maintain that, regardless of the form of collocation, the interconnector is still relying on the entire LEC network for service and there has been no showing by any entity that its service levels are inadequate. Further, Ohio Bell suggests that, if an interconnector desires a higher level of service than presently provided, this could be a negotiated issue.

Because it is impossible to determine the number of parties that will seek collocation in the future, Ohio Bell repeats its claim that there will be space and security concerns within many of its COs. United posits that the Coalition glossed over the fact that the LECs, while permitting a limited number of non-employees into their COs, have long standing relationships with its contractors including the ability to accept or reject any particular person. United further avers that it has confidentiality agreements with its contractors which provide the company a clear legal remedy should sensitive information be disclosed. And finally, when working in a CO, the contractor is working on behalf of United whereas interconnector personnel certainly will not be acting in that capacity.

In its reply comments, United points out that it is obvious from the comments submitted by the Coalition and OCTVA that these entities believe that LEC COs are public domain. On the other hand, United argues that LEC COs are not "institutions or clubs to which one may seek access; these offices are the heart of the LECs' business, built and maintained by the LECs." United further cautions the Commission to keep in mind that when interconnectors speak of customer benefits regarding physical collocation those customers are large business users and not residential subscribers residing in United's small and widely dispersed exchanges. Taking issue with one of the arguments set forth by the Coalition, United points out that staff's rationale for recommending virtual collocation was clearly set forth in Appendix A of the November 12, 1992 Entry.

United, GTE and Ohio Bell agree that adopting staff's virtual collocation recommendation averts legal challenges presently being pursued on the federal level. These entities further argue that their status as public utilities does not affect the unlawful nature of a "taking" under mandatory physical collocation and that they enjoy the same constitutional protection as all other private property owners. These entities allege that in Ohio the right to take private property for public use can only be exercised pursuant to a legislative grant of authority. While the legislature has specifically granted this right to several state agencies,

these entities do not believe that such authority, either express or implied, has been granted to the Commission.

United requests that the Commission reconsider staff's recommendation that all arrangements between interconnectors and LECs be filed as tariffs and reviewed under the Commission's tariff review process. According to United, the rates, terms and conditions specific to the interconnector's choice of CO equipment and fiber should be negotiated on a contractual basis rather than under the standard tariffing rules. The tariffing rules are, according to United, an inappropriate and unnecessarily rigid method of establishing prices for these arrangements.

Sprint<sup>18</sup> did not take a position on the appropriate method of collocation. Instead Sprint's policy is that ". . . as long as collocation is provided in a manner which permits all types of traffic, including switched, to be carried through an interconnection arrangement, then the benefits of increased choice will be realized." However, Sprint did warn that no interconnector, already located at the LEC CO, should derive a competitive advantage on the basis of any prior interconnection arrangement.

Centel notes that cellular companies have negotiated acceptable cellular interconnection arrangements with the LECs, in accordance with an FCC directive, since the inception of the industry. Therefore, the Commission should refrain from any rule-making that would effect that interconnection of cellular to land-line telephone companies.

OTA, in its comments submitted on behalf of its non-Tier 1 LEC members,<sup>19</sup> asks the Commission to disclaim that the Commission is reaching any conclusion that expanded interconnection is necessary, desirable or appropriate with respect to non-Tier 1 LECs. Additionally, OTA urges the Commission to exempt, as the FCC has done, non-Tier 1 LECs from the interconnection standards contained within the 91-141 Order because non-Tier 1 LECs have not had an adequate opportunity to address the relevant issues surrounding interconnection and the non-Tier 1 LECs have limited experience

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18. On December 4, 1992, Sprint filed an initial set of comments. However, on December 16, 1992, Sprint timely filed a new set of initial comments with a motion requesting that these latter comments be substituted for the former comments. Sprint's motion should be approved and the December 16, 1992 comments shall be considered as its initial comments.

19. While not submitting comments of their own, Chillicothe concurred in the comments submitted by the OTA.

upon which to express a position on interconnection and collocation. OTA also points to the FCC 91-141 Order wherein the FCC found ". . . it is unlikely that there would be great demand for expanded interconnection in the smaller LECs' service areas, at least in the near term."<sup>20</sup>

OTA further argues that it is ill-advised to include non-Tier 1 LECs in this proceeding based upon a clear reading of the FCC's 91-141 Order. The better approach, according to OTA, would be to limit the scope of this proceeding to Tier 1 LECs and, thereafter, if appropriate, investigate the possibility of including the small companies. The Commission should, according to OTA, "avoid unduly and unnecessarily raising concerns of the small companies prematurely and thereby placing undue burdens upon the limited time and resources of their management personnel."

In its reply comments, OCC states that, while it remains supportive of staff's recommendation, it has some major disagreements with comments submitted by both sides. Notably, OCC is not convinced by the Coalition's argument that under virtual collocation interconnector's will be harmed by not being able to maintain higher performance standards than those of the LECs. OCC suggests that interconnectors do not warrant any greater repair and maintenance standards than do other LEC customers and, if unsatisfied, may file a complaint as other subscribers must. Like Ohio Bell, OCC is also concerned that the need to plan for the more-extensive arrangements of physical collocation may have a detrimental impact on the LEC's ability to plan and provide service to the LEC's basic customers.

Regarding the inclusion of the non-Tier 1 LECs in this proceeding, OCC avers that the only issue presently before the Commission is a determination of what form of collocation will be adopted by Ohio. OCC, therefore, suggests that we defer this matter until later in the docket. OCC is also concerned with the Coalition argument that staff was unable to meet with members of the Coalition until the day the Commission opened this docket. The impression left, according to OCC, is that the LECs' positions was given more weight in the development of staff's position. Further, OCC believes that, having reviewed all of the comments submitted thus far, a hearing may be appropriate on future interconnection issues not yet addressed by the Commission.

#### V. CONCLUSION

Upon thoroughly reviewing the substantial comments submitted in this case and being fully informed of the FCC's 91-141 Order,

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20. FCC 91-141 Order at page 29.

we believe that it is possible to further competition and address the concerns raised in this docket without mandating either physical or virtual collocation at this time. Therefore, we are permitting all Tier 1 Ohio LECs to negotiate collocation arrangements based upon the unique circumstances of each collocation request and allowing the LECs to choose which form of collocation to use for expanded interconnection subject to the provisions herein. However, acknowledging that this is an historic first step into opening up local transport for competition and in order to ensure that the negotiated arrangements are in the public interest, every negotiated collocation arrangement, until the Commission determines otherwise, shall be submitted to the Commission for approval prior to becoming effective. Further, all negotiated arrangements must meet the terms and conditions set forth regarding collocation in the FCC's 91-141 Order, as well as the conditions which we set forth, as the minimum acceptable level of providing expanded interconnection in Ohio.

Moreover, in the event of a bona fide dispute as to the adequacy of the collocation offered by a LEC, the interconnector may file a complaint with the Commission pursuant to Section 4905.26, Revised Code, and the interconnector will have available to it all of the remedies provided by Chapter 49 of the Revised Code. If such a case is filed, the Commission will be the final arbiter and will determine the reasonableness of the respective parties' positions based on the record evidence in the case. Furthermore, the Commission reserves the right to order either physical or virtual collocation at a particular CO depending on the unique circumstances surrounding the dispute.

By issuing this Order, we are exercising the option granted to the states by the FCC to adopt a form of collocation different than the one adopted on the federal level. We agree with the commenters who suggest that the practical effect of our failing to adopt a collocation policy prior to February 16, 1993, is de facto preemption. We believe that it is prudent to adopt a state policy, particularly in light of the potential adverse impact interconnection policies might have on intrastate ratepayers if the state's ability to effect future regulation is not preserved.

By adopting negotiated collocation, we have found that the policy objectives and the public interest inherent in expanded interconnection will be better served by the adoption of this standard, rather than a universal mandate of either physical or virtual collocation at this time. In addition, by adopting negotiated collocation as the appropriate standard, we maintain full jurisdiction over intrastate collocation. Further, as the state regulatory body in Ohio, we are in the best position to balance the FCC's stated goals of interconnection and competition with our obligation to ensure the availability of adequate basic

local exchange service at reasonable rates to Ohio ratepayers. We also share OCC's concern that the added security and pre-construction costs accompanying mandatory physical collocation may be passed on to basic service customers. We believe that establishing state regulatory control over the allocation of the LECs' CO space is both prudent and necessary to balance our interest in promoting competition with our interest in assuring that space is available.

At the outset, we note that there are no real technical advantages between virtual and physical collocation. Granted, as previously acknowledged in the comments, physical collocation gives the interconnector more control over the installation, repair and maintenance of its electronic terminating equipment housed in the LEC COs. However, this supposed benefit, in our view, can sometimes be outweighed by the possible security risks and costs accompanying physical collocation, the potential management problems mandatory physical collocation causes for the LECs, the potential disputes over floor space, the potential for disagreement over CO construction work and the possibility of legal challenges whenever a LEC needs to re-occupy CO floor space in order to provide service to its core customer base. We believe that these issues, as well as others, are best addressed through fair, balanced negotiated arrangements. Thus, we expect negotiated collocation arrangements that come to us for approval to address all of these issues.

By adopting this position, we are not unaware of the bargaining concerns raised by those advocating mandatory physical collocation. However, we note that the 91-141 Order provides that, in spite of our action, all Ohio Tier 1 LECs must file physical collocation tariffs with the FCC on February 16, 1993, along with any requests for exemption from the physical collocation requirement based on a state action adopting virtual or permitting LECs to choose. In ruling on the exemption request, the FCC will permit LECs to withdraw their physical collocation tariffs before their effective date. As such, these proposed tariffs, as well as the physical collocation arrangements in other states, will provide a starting point or reasonable measure of comparability for interconnectors negotiating physical or virtual collocation arrangements and will definitely be considered by the Commission in adjudicating disputes.

We will monitor closely the negotiated collocation arrangements in Ohio and should we determine that a party is not negotiating the terms and conditions of collocation in good faith we may step in and take corrective action, if necessary. However, at the current time, we believe all commenters' concerns can be addressed by adopting the safeguards for collocation addressed in the 91-141 Order and discussed in some detail below.

We expect that there will be situations where a LEC chooses to offer or, in the process of negotiation, make available physical collocation on a CO specific basis.<sup>21</sup> Once a LEC chooses physical collocation at a particular CO, it is obligated, absent extenuating circumstances or until floor space runs out, to offer physical collocation to all interconnectors requesting it in that particular CO. Once floor space is exhausted, the LEC would be responsible for providing virtual collocation to all parties seeking interconnection. However, we also envision a situation where a LEC may choose, as a company-wide policy, to adopt physical collocation throughout its operating territories. Again, once chosen, a LEC would be required to offer to interconnectors, on a non-discriminatory basis, physical collocation absent extenuating circumstances or until floor space is exhausted. Thereafter, the LEC would be responsible for providing virtual collocation to all parties seeking interconnection.

Further, under the FCCs' vision of physical collocation, Tier 1 LEC's are required to tariff, at statewide averaged rates, the cross connect element and any contribution charge that may be permitted in the future. The FCC also found that, while the price of floor space may vary by CO, the price for all interconnectors within a particular CO should be uniform. Thus, floor space charges for physical collocation are to be tarified on a uniform charge per square foot basis. Further, under the FCC's 91-141 Order, LECs should be able to recover reasonable LEC-tarified charges from interconnectors for labor and materials necessary for initial site preparation of CO space. Finally, under physical collocation, the FCC determined that other reasonably standardized items such as power, environmental conditioning and use of riser and conduit space should be tarified for each CO.

However, recognizing that virtual collocation may be the only form of interconnection available in some LEC offices and due to the LECs' market share and bargaining position as providers of the local telephone network, we agree with the FCC that it is appropriate to set forth minimum standards applicable to both LECs and interconnectors pertaining to virtual collocation. First, under virtual collocation, we find that interconnectors must be able to designate the central office transmission equipment dedicated to their use. Equipment designation provides interconnectors greater ability to configure their networks in the manner most appropriate for them. In addition, we do not believe it is necessary to limit interconnector equipment to a LEC-developed list, although it is necessary for interconnector equipment to meet applicable fire,

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21. In fact, CBT has acknowledged that it would prefer negotiating physical collocation in most offices as opposed to virtual.

safety and network reliability standards. Interconnector designation of equipment should not pose a concern for LEC technicians because, as pointed out by Ohio Bell, there are a limited number of manufacturers of this equipment and there are, as well, applicable network standards which all equipment must meet. Because there is a limited variety of terminating electronic equipment, there should be limited training costs, if any, for LEC technicians. In the event that there are additional costs reasonably incurred due to the interconnectors' choice of equipment, the LECs may be permitted to impose these costs upon the interconnector.

Further, in situations where virtual collocation is offered, we are adopting the tariffing arrangements found in the FCC 91-141 Order as the appropriate tariffing arrangements for Ohio Tier 1 LECs. In addition, recognizing that some parties may desire financial arrangements governing the lease or ownership of interconnector central office electronics and interconnecting fiber under virtual collocation, we are leaving the terms associated with the provision of CO electronics to be negotiated between the LEC and the interconnector. Once complete, however, these arrangements must be submitted to the Commission for approval under the appropriate contract approval method. Once approved, such negotiated terms would be available, through tariff, to all future entities desiring virtual interconnection in a similar manner.

Moreover, recognizing the potential for discrimination by the LECs under virtual collocation, we shall require LECs, at a minimum, to install, maintain and repair interconnector equipment under the same time intervals and with the same failure rates that apply to the performance of similar functions for comparable LEC equipment. In order to evaluate how this collocation position works in practice, we will require the LECs to keep records<sup>22</sup> and submit annual reports to the Commission on the installation, maintenance and repair intervals for comparable LEC and interconnector equipment and circuits under virtual collocation. Moreover, nothing within this decision forecloses the interconnectors from negotiating installation, maintenance and repair issues with the affected LEC. The Commission notes that nothing herein precludes the LECs and interconnectors from negotiating a higher level of service for virtual collocation which is comparable to physical collocation. The Commission would look unfavorably upon a LEC's refusal to negotiate such a higher level of service for virtual collocation. However, the Commission continues to believe that it

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22. A LEC should begin compiling these records as soon as the first interconnector takes a cross connect circuit and annually submit these reports beginning May 1, 1994.

is reasonable for the LEC to be compensated for this higher level of service and that such arrangements be strictly limited to truly competitive circumstances.

We also believe it is appropriate to allow interconnectors, under virtual collocation, to monitor and control remotely the terminating electronics in the LEC CO. This standard is appropriate in order to give the interconnector control over its service quality because it permits the interconnector to detect and correct service problems on its interconnected circuits. This does not, however, prohibit an interested interconnector from arranging for the LEC to provide monitoring and control functions if agreeable to both parties.

Again, in reaching our conclusion on collocation, we are not unmindful of the concerns expressed by those parties urging us to adopt mandatory physical collocation. However, when weighing those concerns against the opposing position, and keeping in mind the interests of all telecommunication users in Ohio, we find that it is in the public interest to adopt the position enumerated herein. We believe that collocation, under the terms and conditions we have established, provides a workable balance of the positions expressed in this docket. We further note that, once the tariffs become effective, entities, by virtue of interconnecting with the LEC CO, will have much better opportunities to compete against the LECs than at any other time in the special access market. As acknowledged by the FCC, expanded interconnection is an historic step heretofore prohibited in the access market. Further, because negotiated collocation does not involve the forced appropriation of LEC property, it is not, therefore, necessary to consider further the constitutional arguments raised in this proceeding.

Centel and OTA have raised issues concerning to what entities expanded interconnection will apply. We agree with OCC that this should be one of the future topics included in staff's interconnection recommendation and that a decision on this issue should be deferred at this time. Further, Sprint and GTE also raised issues surrounding expanded interconnection which were not a part of staff's November 12, 1992 collocation recommendation. We encourage Sprint and GTE to address these concerns in their comments surrounding the entire interconnection recommendation forthcoming shortly from staff so that all interested entities will have ample opportunity to comment on these issues.

Finally, we wish to make it clear that this Order is a final decision by this Commission in favor of a LEC negotiated method of collocation and in favor of allowing LECs to choose which form of interconnection to use for expanded interconnection subject to the provisions herein. This policy is necessarily limited by the



FCC's 91-141 Order to Tier 1 LECs operating in Ohio. Those Tier 1 LECs affected by the FCC's 91-141 Order are encouraged to submit exemption requests based on this final Order along with the interstate tariffs filed on February 16, 1993, at the FCC.

It is, therefore,

ORDERED, That the motions for an evidentiary hearing on the issue of collocation are denied. It is, further,

ORDERED, That it is unnecessary to rule on the motions to intervene. It is, further,

ORDERED, That notice and comment, as utilized on this collocation issue, is an appropriate method of obtaining varying viewpoints from interested entities and rendering a decision on this matter. It is, further,

ORDERED, That Sprint's motion to substitute the comments submitted on December 16, 1992, for those filed on December 4, 1992, is granted. It is, further,

ORDERED, That the collocation policy reflected in the Conclusion Section of this Order represents this Commission's final Order on collocation pursuant to the Ohio Revised Code. It is, further,

ORDERED, That the collocation policy adopted herein represents the minimum acceptable standards for interconnection in Ohio. However, the Commission shall continue to monitor closely the terms and conditions of collocation and interconnection in Ohio and will take corrective action should problems develop. It is, further,


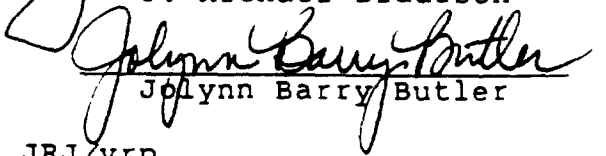
ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That copies of this Finding and Order be served upon all local exchange companies operating in Ohio; all interexchange carriers, cellular companies and paging companies certified to do business in Ohio; the Ohio Telephone Association; the Office of the Consumers' Counsel; the cities of Cleveland, Cincinnati and Columbus; the Ohio Public Communications Association; the Ohio Cable Television Association; all pending competitive access provider applicants; the Coalition of Ohio Competitive Access Providers; and all other interested persons of record.

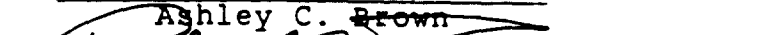
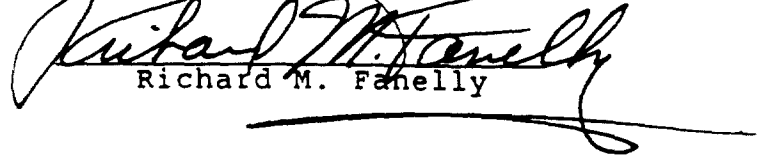
THE PUBLIC UTILITIES COMMISSION OF OHIO



Craig A. Glazer, Chairman

  
J. Michael Biddison  
  
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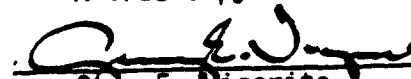
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Ashley C. Brown  
  
Richard M. Fanelly

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Gary E. Vigorito  
Secretary

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation                   )  
Relative to Expanded Interconnection            ) Case No. 92-1992-TP-COI  
with Local Telephone Company                    )  
Facilities.    )

CONCURRING OPINION OF CHAIRMAN CRAIG A. GLAZER

I concur in the Commission's decision in this matter. I write separately to outline some of my own thoughts with regard to the process we have been forced to follow in this case as well as to explain some of the rationale underlying my concurrence with the Commission's decision.

This decision has taken a great deal of Staff and Commission time--probably more than is justified given the narrowness of the issue presented to us at this time. I wish, in the first instance, to applaud the excellent work of our Staff interconnection team which carefully weighed the competing interests and was not afraid to consider and then reconsider again its own policy position in this matter. I have enjoyed working with them and look forward as we continue to tackle difficult issues in this area.

The FCC's creation of a special "state exemption" in its Interconnection Order is something unique in federal/state relationships and represents a watershed opportunity for the FCC to begin to repair bruised relationships with the states on a whole host of matters. It also has allowed and in fact forced states to focus on what their own state policies should be in the area of competition and interconnection in the local loop. Unfortunately, the FCC's manner of presenting this to the states---requiring a "final" decision by February 16 and limiting the state's options to an artificial menu chosen by the federal regulators in many ways frustrated the very deference to the states the FCC attempted to provide. As Cincinnati Bell appropriately pointed out in this docket, there are a host of state regulatory issues raised by the FCC's decision to permit local interconnection. Unfortunately, to date we have been forced to make a decision on the narrow issue of physical vs. virtual colocation without having the benefit of exploring all of the implications of the FCC's interconnection policy as a whole. The Ohio Commission will be tackling these additional issues in this interconnection docket and potentially in the individual alternative regulation cases brought by our large local exchange companies. I would urge all affected parties to make their views on these larger issues known to the Staff interconnection team at the appropriate time.

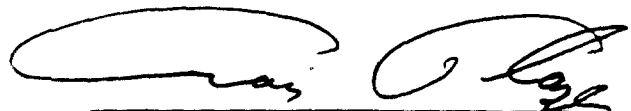
This being said, we must play the hand dealt to us by the FCC. The Commission's Order in this docket, in my opinion, appropriately leaves the issue of physical vs. virtual interconnection, in the first instance, to the large local exchange company which is most familiar with its own planning requirements and needs. It is far

better for us to allow the LEC to undertake its own evaluation, on a Central Office by Central Office basis, rather than our dictating one particular statewide solution that may not be in the best interest of either party.

That being said, although this matter is, in the first instance, being left up to the local exchange company, the Commission's order makes quite clear that the LECs cannot use their decision as a weapon to stifle burgeoning competition. The parties should first attempt to negotiate an interconnection arrangement that meets their respective needs. If that cannot be done, then the Commission will, in the event of a bona fide dispute, step in and decide the issue and may order physical interconnection at a particular location if that solution is justified. (Of course, for this to work, we simply must make our complaint process more "user friendly" than it has been to date, something which we have committed to in our alternative regulation docket.)

What is most unfortunate is that we have not heard from Ohio's large communication users in this docket. On the national scene, they have generally embraced competition and diversity of suppliers as critical to location decisions. Interestingly, these same concerns are found in the telecommunications policy of this state which provides inter alia that we are to "(p)romote diversity and options in the supply of public telecommunications services and equipment throughout the state." Section 4927.02(A)(4), Revised Code. As we proceed in this docket and in our alternative regulation docket, I call upon the large business users of telecommunications services (as well as small businesses) to participate in our processes and let us know if competitive choices and diversity of suppliers is something which is important to them. The issue is not just whether we want a sophisticated telecommunications infrastructure in this state but, in addition, who provides it and who pays for it.

Today's Commission decision appropriately balances the competing interests put forward in this docket. It does not force a pre-ordained result on the LEC but also recognizes the differences in the relative bargaining power of the parties as negotiations proceed. It is up to all sides to make the policy work and assist us, in a positive manner, as we proceed with deciding the upcoming difficult issues raised in this docket.



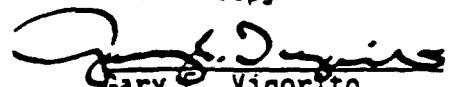
Craig A. Glazer Chairman  
Chairman

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Gary E. Vigorito  
Secretary

**A T T A C H M E N T**

**B**

## **General Procedures**

**A.** For new or existing products LRSIC is equal to the cost of increasing the volume of production from zero to a specified level while holding all other product and service volumes constant.

1. The LRSIC is long run in that it includes the cost of producing a product or service using the best combination of inputs.

2. The LRSIC of a product and service is the sum of all its volume-sensitive costs and its service-specific fixed costs.

3. The average unit cost is the service-specific volume sensitive cost plus the service-specific direct fixed cost divided by the quantity of service produced.

(a) The volume-sensitive and service-specific fixed costs can be investment or expense related.

(b) If investment related, an annual cost shall be computed.

(c) Both volume-sensitive and service-specific fixed costs can have recurring and nonrecurring components.

## **B. Service Description**

1. The subject service of the cost study shall be clearly defined in terms of technical characteristics, functionality, application and availability (e.g., Digital Centrex lines with Call-Waiting, Call-Forwarding and Call-Hold).

2. The components of the service shall then be clearly identified and described in terms of cost elements such as memory, line cards, and copper pairs.

## **C. Application Period (AP)**

1. The application period shall be the length of run for a cost study, recognizing both the economic life of the offering and its sensitivity to changes in technology and customer demands.

## **D. Demand Forecast**

1. The telecommunications carrier shall provide the demand forecast used in the LRSIC computations.

2. The forecast shall reflect total demand for the service, averaged over the length of run of the cost study, incorporating the time value of money in the average.

## **E. Technology**

1. LRSIC cost studies shall reflect only forward-looking technology. That is, the cost study examines only current and future technologies whose costs can be reasonably

estimated by the telecommunications carrier

#### F. Inflation

1. LRSIC studies shall reflect costs that are expected to be incurred during the AP. Such costs shall be projected to their anticipated level over the AP by using an appropriate index of future cost, such as supplier estimates of price changes, indices developed from labor contracts, or other relevant indices.

#### G. Investment Development

##### 1. Material Investment

- (a) The development of the material component of investment shall begin with the current vendor price(s) for the hardware and software resources required to provide the service, projected over the AP as described above.
- (b) Other components of material investment shall include inventory, supply expenses and sales taxes.
- (c) The sales tax component of investment shall be calculated by applying a sales tax factor. The factor shall reflect taxes imposed by state and local taxing bodies on material purchases. It shall be applied to the material and inventory components.
- (d) The supply component shall include the expense incurred by the telecommunications carrier for storage, inventory, and delivery of material.

##### 2. Labor Investment

There are two major components of labor investment, vendor related and telecommunications carrier related.

- (a) Vendor labor related investment shall include billed installation and engineering.
- (b) The telecommunications carrier's labor related investment may be developed based on account averages or from estimates of product specific plant engineering and installation hours.
- (c) Total labor costs shall be computed by multiplying the account average or product specific work times the appropriate labor rate.
- (d) Hourly labor rates include the operational wages, benefits, paid absence and, if applicable, tools and miscellaneous expense.

##### 3. Utilization Factors

The investment developed above shall be adjusted to reflect usable capacity by dividing the investment by a utilization factor.

(a) The utilization factor shall be the objective or design fill which shall be derived as the maximum capacity of the capital resource, less any capacity required for maintenance, testing and administrative purposes.

#### H. Annual Costs

1. Depreciation is the periodic recognition of investment cost. Forward looking lives should be used to determine depreciation expense.

2. Cost of money associated with an investment is the weighted average of the telecommunications carrier's cost of debt and equity applied to the net investment on a forward looking basis over the AP

3. The federal, state and local income tax expenses shall be determined based the price floor

(a) Since federal, state and local taxes are applicable, recognition is given to the "Tax-on-tax" situation that results from the deductibility of state and local tax when federal taxes are paid.

4. Maintenance costs are incurred in order to keep equipment resources in usable condition

(a) Included in this classification are: direct supervision, engineering associated with maintenance work, labor and material costs incurred in the up keep of plant, rearrangements and changes of plant, training of maintenance forces, testing of equipment and facilities tool expenses, and miscellaneous expenses.

(b) The specific maintenance cost estimates associated with the service in question or investment related annual maintenance factors may be applied to arrive at an annual maintenance cost

(c) The factor shall be specific to the investment and expense accounts associated with the service and be developed from the most current data reasonably available to the telecommunications carrier.

5. Ad valorem taxes are levied on the value of plant and are determined by assessment, i.e. local property taxes levied against telephone plant

(a) For telecommunications services, and ad valorem tax factor is applied against investment.

(b) This factor shall be developed by dividing the most current taxes paid by the telecommunications carrier's total current investment.

6. Central office power equipment is generally fixed in configuration and its cost is insensitive to the number



of services offered.

(a) Annual cost do not include this element unless it is determined that a service causes the telecommunications carrier to increase its investment in power equipment.

7. Land and building costs are generally insensitive to the number of service offered.

(a) Annual costs shall not include this element unless it is determined that a services causes the telecommunications carrier to increase land and building investment.

8. Other direct recurring cost such as marketing, advertising and sales expenses, and nonrecurring product costs such as the initial programming of the billing system shall be included in the LRSIC. Labor and material resource costs incurred in connection with these activities shall be developed as specified.